

REFERENCE TITLE: water conservation notice; no forfeiture

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
First Regular Session  
2021

# HB 2056

Introduced by  
Representative Griffin

AN ACT

AMENDING SECTIONS 45-141, 45-188 AND 45-189, ARIZONA REVISED STATUTES;  
AMENDING TITLE 45, CHAPTER 1, ARTICLE 7, ARIZONA REVISED STATUTES, BY  
ADDING SECTION 45-189.01; RELATING TO WATERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 45-141, Arizona Revised Statutes, is amended to  
3 read:

4 45-141. Public nature of waters of the state; beneficial use;  
5 reversion to state; actions not constituting  
6 abandonment or forfeiture

7 A. The waters of all sources, flowing in streams, canyons, ravines  
8 or other natural channels, or in definite underground channels, whether  
9 perennial or intermittent, flood, waste or surplus water, and of lakes,  
10 ponds and springs on the surface, belong to the public and are subject to  
11 appropriation and beneficial use as provided in this chapter.

12 B. Beneficial use shall be the basis, measure and limit to the use  
13 of water.

14 C. Except as otherwise provided in this title or in title 48, when  
15 the owner of a right to the use of water ceases or fails to use the water  
16 appropriated for five successive years, the right to the use shall cease,  
17 and the water shall revert to the public and shall again be subject to  
18 appropriation.

19 D. Underground water storage, pursuant to chapter 3.1 of this  
20 title, for future beneficial use of waters appropriated pursuant to this  
21 chapter does not constitute an abandonment or forfeiture.

22 E. The following water exchange arrangements or substitutions do  
23 not constitute an abandonment or forfeiture of all or any portion of a  
24 right to use surface water:

25 1. Exchanging surface water for groundwater, effluent, Colorado  
26 River water, including water delivered through the central Arizona  
27 project, or another source of surface water pursuant to chapter 4 of this  
28 title.

29 2. Substituting groundwater, effluent, Colorado River water,  
30 including water delivered through the central Arizona project, or another  
31 source of surface water for surface water.

32 F. CONSERVATION OF WATER PURSUANT TO A WATER CONSERVATION PLAN  
33 NOTICE FILED WITH THE DIRECTOR AS PRESCRIBED BY SECTION 45-189.01 DOES NOT  
34 CONSTITUTE AN ABANDONMENT OR FORFEITURE OF THE WATER CONSERVED.

35 Sec. 2. Section 45-188, Arizona Revised Statutes, is amended to  
36 read:

37 45-188. Future rights acquired through appropriation; rights  
38 within service area of agricultural or municipal  
39 provider

40 A. Any person who is entitled to divert or withdraw public waters  
41 of the state through an appropriation and evidenced by a certificate of  
42 water right issued under article 5 of this chapter, a court decree, or  
43 previous possession or continued beneficial use and who intentionally  
44 abandons the use thereof or who voluntarily fails, without sufficient  
45 cause, to beneficially use all or any part of the right to withdraw for

1 any period of five successive years shall relinquish such right or portion  
2 thereof. The rights relinquished shall revert to the state, and the  
3 waters affected by such rights shall become available for appropriation to  
4 the extent they are not lawfully claimed or used by existing  
5 appropriators.

6 B. If a use or claim is subject to forfeiture by nonuse, failure by  
7 the appropriator to use water within a five year period does not result in  
8 a forfeiture of the associated water right if water use is resumed before  
9 the occurrence of the earlier of any of the following:

10 1. The initiation of proceedings pursuant to section 45-189 to  
11 determine whether the right has been forfeited or abandoned.

12 2. The filing by a third party of a statement of claimant in a  
13 general adjudication instituted pursuant to article 9 of this chapter that  
14 asserts the right to use water from the stream in which the subject nonuse  
15 has occurred.

16 3. The assertion by a third party of written objections in response  
17 to an application by the appropriator to sever and transfer the right  
18 pursuant to section 45-172.

19 C. CONSERVATION OF WATER PURSUANT TO A WATER CONSERVATION PLAN  
20 NOTICE FILED WITH THE DIRECTOR AS PRESCRIBED BY SECTION 45-189.01 DOES NOT  
21 CONSTITUTE AN ABANDONMENT OR FORFEITURE OF THE WATER CONSERVED.

22 Sec. 3. Section 45-189, Arizona Revised Statutes, is amended to  
23 read:

24 45-189. Reversion of rights due to nonuse; notice; hearing;  
25 order; exception

26 A. When it appears to the director that a person entitled to the  
27 use of water has not beneficially used all or a portion of the water right  
28 for a period of five or more consecutive years, and it appears that the  
29 right has or may have reverted to the state because of such nonuse, as  
30 provided by section 45-141 and section 45-188, subsection A, the director  
31 shall notify such person to show cause at an administrative hearing why  
32 the right or portion of the right should not be declared relinquished.

33 B. The notice shall contain:

34 1. The time and place of the hearing.

35 2. A description of the water right, including the approximate  
36 location of the point of diversion, the general description of the lands  
37 or places where such waters were used, the water source, the amount  
38 involved, the purpose of use, the apparent authority ~~upon~~ ON which the  
39 right is based and the factual basis for the notice to show cause.

40 3. A statement that unless sufficient cause is shown the water  
41 right will be declared relinquished.

42 C. The notice shall be served at least thirty days before the  
43 hearing.

1 D. The director shall make an order determining whether such water  
2 right has been relinquished and give notice to each party of the order by  
3 serving such persons at their last known addresses.

4 E. For the purposes of this section, section 45-141, subsection C  
5 and section 45-188, subsection A, the following reasons shall be  
6 sufficient cause for nonuse:

- 7 1. Drought, or other unavailability of water.
- 8 2. Active service in the armed forces of the United States during  
9 military crisis.
- 10 3. Nonvoluntary service in the armed forces of the United States.
- 11 4. The operation of legal proceedings.
- 12 5. Federal, state or local laws imposing land or water use  
13 restrictions, or acreage limitations, or production quotas.
- 14 6. Compliance with an applicable conservation requirement  
15 established by the director pursuant to chapter 2, article 9 of this  
16 title.

17 **7. CONSERVATION OF WATER PURSUANT TO A WATER CONSERVATION PLAN**  
18 **NOTICE FILED WITH THE DIRECTOR AS PRESCRIBED BY SECTION 45-189.01.**

19 ~~7.~~ 8. With respect to a water right appropriated for an irrigation  
20 use, either of the following:

21 (a) Pendency of a proceeding before a court or the director to  
22 change the permitted use from irrigation to municipal or other uses  
23 pursuant to a court decree or section 45-156 or to sever the right from  
24 the land to which it is appurtenant and transfer it for municipal use  
25 pursuant to section 45-172.

26 (b) After a change in the permitted use from irrigation to  
27 municipal pursuant to a court decree or section 45-156 or 45-172,  
28 insufficient demand for the water by the municipal users.

29 ~~8.~~ 9. Any other reason that a court of competent jurisdiction  
30 deems would warrant nonuse.

31 F. Section 45-114, subsections A and B govern administrative  
32 proceedings, rehearing or review and judicial review of final decisions of  
33 the director under this section.

34 Sec. 4. Title 45, chapter 1, article 7, Arizona Revised Statutes,  
35 is amended by adding section 45-189.01, to read:

36 **45-189.01. Water conservation plan notice; filing; exemption;**  
37 **duration**

38 **A. BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION, A PERSON WHO IS**  
39 **ENTITLED TO THE USE OF WATER MAY FILE WITH THE DIRECTOR A WATER**  
40 **CONSERVATION PLAN NOTICE. A WATER CONSERVATION PLAN NOTICE SHALL INCLUDE**  
41 **THE FOLLOWING:**

- 42 1. **THE NAME AND ADDRESS OF THE PERSON WHO IS ENTITLED TO THE USE OF**  
43 **WATER THAT IS INCLUDED IN THE WATER CONSERVATION PLAN.**

1           2. A DESCRIPTION OF ALL WATER RIGHTS AND CLAIMS THAT THE PERSON WHO  
2 IS ENTITLED TO USE THOSE WATER RIGHTS AND CLAIMS IS INCLUDING IN THE WATER  
3 CONSERVATION PLAN.

4           3. THE PLACE AND PURPOSE OF THE USE OF THE IDENTIFIED WATER RIGHTS  
5 AND CLAIMS AND THE HISTORICAL AND CURRENT WATER USE.

6           4. A DESCRIPTION OF ANY WATER CONSERVATION MEASURES THAT WILL BE  
7 IMPLEMENTED AS PART OF THE WATER CONSERVATION PLAN.

8           5. A STATEMENT THAT THE WATER CONSERVATION PLAN IS VOLUNTARY AND  
9 TEMPORARY IN NATURE.

10          6. A STATEMENT THAT THE WATER CONSERVATION PLAN IS INTENDED TO  
11 RESULT IN THE TEMPORARY REDUCTION IN THE USE OF WATER OR A REDUCTION IN  
12 THE DIVERSION OF WATER.

13          7. A STATEMENT THAT THE ACTIVITIES DESCRIBED IN THE WATER  
14 CONSERVATION PLAN WILL CONTRIBUTE TO THE PRACTICAL AND ECONOMICAL  
15 MANAGEMENT, CONSERVATION AND USE OF SURFACE WATER IN THE WATERSHEDS OF  
16 THIS STATE.

17          8. A STATEMENT THAT THE PERSON WHO HOLDS THE VALID WATER RIGHT THAT  
18 IS SUBJECT TO THE WATER CONSERVATION PLAN DOES NOT INTEND TO ABANDON SUCH  
19 WATER RIGHT DURING THE TERMS OF THE WATER CONSERVATION PLAN.

20          B. ON FILING A WATER CONSERVATION PLAN NOTICE, THE CONSERVATION OF  
21 WATER PURSUANT TO THE PLAN DOES NOT CONSTITUTE AN ABANDONMENT OR  
22 FORFEITURE OF THE WATER CONSERVED. A PERSON MAY NOT ACCRUE LONG-TERM  
23 STORAGE CREDITS FOR ANY WATER THAT IS CONSERVED IN A WATER CONSERVATION  
24 PLAN NOTICE FILED PURSUANT TO THIS SECTION.

25          C. A WATER CONSERVATION PLAN SHALL DESIGNATE A DURATION OF UP TO  
26 TEN YEARS. THE PERSON FILING THE WATER CONSERVATION PLAN NOTICE MAY FILE  
27 A SUBSEQUENT NOTICE FOR SOME OR ALL OF THE WATER RIGHTS AND CLAIMS BEFORE  
28 EXPIRATION OF THE DESIGNATED TIME AND MAY FILE SUBSEQUENT WATER  
29 CONSERVATION PLAN NOTICES FOR ONE OR MORE PERIODS OF UP TO TEN YEARS EACH.

30          Sec. 5. Legislative intent; prospective effect only;  
31 clarification

32          The legislature intends that this act apply prospectively only and  
33 that it clarifies that conservation of water as prescribed by this act  
34 contributes to the practical and economical management, conservation and  
35 use of surface water in the watersheds of this state without affecting  
36 water rights or claims associated with conserved water.